Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-02-638 OF 2000

SHAIK DAUD, ABDUL HAMID MOHAMAD AND ABDUL KADIR SULAIMAN JJCA

1 OCTOBER 2001

Civil Procedure *— Contempt of court — Interference with due administration of justice — Transfer of properties to defeat pending application for injunction — Bad faith — Whether applicant should have apply for interim mareva injunction to prevent transfer of properties — Whether directors of company in contempt — Whether mens reas must be proved*

The appellant commenced arbitration proceeding against the respondent in respect of disputes arising under a building contract. The appellant then filed OS 509/98 to secure some of the appellant's claims pending the award of the arbitrator. The respondent filed OS 670/98 to remove the arbitrator and obtained an ex parte injunction restraining the arbitrator. However, about two weeks later, a consent order was entered whereby the respondent agreed to deposit a sum of RM575,000 into a joint account pending the disposal of the arbitration. While OS 509/98 and OS 670/98 were still pending in Penang High Court, the respondent filed the civil suit in Shah Alam High Court and obtained an ex parte injunction restraining all proceedings at Penang High Court and that the sum of RM575,000 be paid forthwith to the respondent. That order was served on the judge in Penang High Court on the following day, thus stalling the hearing of the appellant OS 509/98. Arising from the service of the order on the judge, the court initiated contempt proceedings against the respondent whereby the respondent was convicted and fined. The Court of Appeal struck out the Shah Alam suit as being the worst case of abuse of court process (see [1999] 4 MLJ 637). The respondent's application for stay of proceedings pending appeal to the Federal Court was dismissed. Immediately after that, the respondent started disposing of the assets of the company to closely related parties. The appellant obtained leave to commit the directors of the respondent ('the contemnors') for contempt for breach of the mareva injunction and the conduct of the contemnors throughout the proceedings in obstructing justice and abusing the process of the court. The High Court dismissed the appellant's application. The appellant appealed. It was submitted that the crux of matter in the appeal was the disposal of the very assets the subject matter of the appellant's application for mareva injunction in OS 509/98 to family members and closely related parties of the respondent pending the determination of the appellant's application. It was also submitted that the said act amounted to obstruction, interference and subversion of the due administration of justice or the course of justice. It was done in bad faith with a view to set the process of court to naught.

Held, allowing the appeal:

(1) The existence of an injunction order is not a pre-requisite for a contempt of court. The test is not the breach of the order but interference with the due administration of justice. In the present case, it was very clear that the transfers of the assets the subject matter of the mareva injunction were for no other reason but to defeat the application for the mareva injunction that was pending and the judgment that may be given in favour of the appellant and the execution thereof, if and when made. The transfers were clearly done in bad faith to defeat the appellant's claims. It was a very clear case of interference with the due administration of justice or the course of justice. It was sufficiently serious and closely connected with the particular proceedings. Taking all the circumstances of this case, it was very clear that the acts complained of were a blatant interference with the due administration of justice or the course of justice that the perpetrators should be punished with contenpt of the court (see pp 590H–I, 592C–D, G).

(2) A person cannot be punished twice for contempt for the same act. In the present case, the first contempt proceeding against the respondent was in respect of the respondent obtaining the ex parte order from the Shah Alam Court. It was on that narrow ground and those specific acts that the first contempt proceeding was initiated. The grounds for the second contempt proceeding, the acts complained were different from those in the first proceeding. In the circumstances the question of the respondent being punished twice for the same act did not arise (see pp 592I–593A, D–F).

(3) The court found that in the circumstances of the case, the appellant could be faulted for not obtaining an interim mareva injunction pending the hearing inter partes of the application for the same injunction. It was reasonable to assume that the appellant had expected that the consent order be honoured by the respondent. That consent order plus the fact that the date(s) for the hearing of the application inter partes was close by were reasonable grounds for the appellant to feel quite safe and not trouble the court further by applying for an interim order (see p 594A–E).

(4) The court found that the facts constituting their alleged contempt as directors and general manager of the respondent company have been set out in great detail. They had never denied that they knew of the acts complained about nor did they deny having anything to do with such acts of the respondent company. Indeed the company could not have done what it did without them. They had put up their defence which clearly showed that they had knowledge of the alleged acts of contempt. The court could not see how they could be prejudiced in any way. Furthermore, they had not raised this issue in the court below (see p 595G–I).

(5) Mens rea is not an ingredient to be proved in contempt proceedings. In any event, looking at all the acts of the respondent company and the circumstances under which they were carried out from which the contemnors could not disassociate themselves, the intention was too clear. It was no other than to dissipate all the assets of the respondent company in questionable dealings to frustrate the mareva injunction proceedings then pending and any judgment that might be obtained later by the appellant in the arbitration proceeding. Thus, their intention clearly was to interfere with the due administration of justice or in the course of justice. In the circumstances the court found that the contemnors were guilty of contempt (see pp 596A–D, 597B).

(6) This judgment must not be understood to mean that whenever there is a pending proceeding, any disposal of the subject matter of the proceedings or the assets of one of the parties thereto is contempt. Whether an act amounts to an interference with the due administration of justice or the course of justice and therefore contempt, or not, depends on the circumstances of each case. The act must be sufficiently serious and sufficiently connected with the particular proceedings. The court will have to consider whether the acts is done in good faith, in the ordinary course of business or whether it is one with a view to frustrate the proceedings thus rendering any subsequent order of court ineffective and fruitless (see p 597D–F).

[**Bahasa Malaysia summary**

Perayu telah memulakan prosiding timbangtara terhadap responden berkenaan dengan pertikaian suatu perjanjian pembinaan. Perayu kemudiannya memfailkan OS 509/98 untuk mengukuhkan tuntutannya sementara menunggu award penimbangtara. Responden telah memfailkan OS 670/98 untuk menyingkirkan penimbangtara tersebut dan telah mendapat injunksi ex parte untuk menyekat penimbangtara tersebut. Walau bagaimanapun, dua minggu kemudiannya, satu perintah persetujuan telah dimasukkan di mana responden telah bersetuju menyimpan RM575,000 ke dalam sebuah akaun bersama sementara menunggu penyelesaian timbangtara tersebut. Sementara menunggu OS 509/98 dan OS 670/98 di Mahkamah Tinggi Pulau Pinang, responden telah memfailkan guaman sivil di Mahkamah Tinggi Shah Alam dan telah mendapat injunksi ex parte yang menyekat segala prosiding di Mahkamah Tinggi Pulau Pinang, dan untuk membayar balik kepada responden RM575,000. Perintah tersebut telah disampaikan ke atas Hakim Mahkamah Tinggi Pulau Pinang pada keesokan harinya, dan ini telah melengahkan pembicaraan OS 509/98 perayu. Berbangkit daripada penyampaian perintah tersebut ke atas hakim, mahkamah telah memulakan prosiding penghinaan mahkamah terhadap responden dan responden telah disabit dan didenda. Mahkamah Rayuan telah

membuang guaman Mahkamah Tinggi Shah Alam sebagai kes penghinaan proses mahkamah yang yang paling teruk (lihat [1999] 4 MLJ 637). Permohonan responden untuk penggantungan prosiding sementara menunggu rayuan kepada Mahkamah Persekutuan telah ditolak. Sejurus selepas itu, responden telah menghapuskira aset syarikat tersebut kepada pihak yang berkaitan rapat. Perayu telah mendapatkan kebenaran untuk mendakwa pengarah-pengarah responden ('penghina mahkamah tersebut') untuk penghinaan mahkamah kerana telah melanggar injunksi mareva, dan untuk perbuatan penghina mahkamah tersebut sepanjang prosiding dalam menghalang keadilan dan menyalahgunakan proses mahkamah. Mahkamah Tinggi menolak permohonan perayu. Perayu merayu. Dihujahkan bahawa dasar perkara rayuan adalah penghapuskiraan aset-aset perkara pokok permohonan perayu untuk injunksi mareva dalam OS 509/98 kepada ahli-ahli keluarga dan pihak-pihak yang berkaitan rapat dengan responden sementara menunggu penyelesaian permohonan perayu. Ia telah juga dihujahkan bahawa perbuatan tersebut bagaikan menghalang, mencampur tangan dan subversi pentadbiran keadilan ataupun perjalanan keadilan. Ia telah dilakukan dengan niat jahat untuk menjadikan proses mahkamah tidak berguna.

Diputuskan, membenarkan rayuan tersebut:

(1) Kewujudan perintah injunksi bukan merupakan keperluan untuk penghinaan mahkamah. Ujiannya bukan merupakan pelanggaran perintah tersebut tetapi campur tangan dalam pentadbiran keadilan. Di dalam kes ini, adalah jelas bahawa pemindahan aset perkara pokok injunksi mareva tersebut hanya untuk mengalahkan permohonan untuk injunksi mareva yang belum diselesaikan, di mana penghakiman boleh diberi kepada perayu bersama dengan pelaksanaannya, jika ia dibuat. Pemindahan tersebut dilakukan dengan niat jahat untuk mengalahkan tuntutan perayu. Ia adalah jelas bahawa ini merupakan campur tangan dalam pentadbiran keadilan atau perjalanan keadilan. Ia adalah serius dan berkaitan rapat dengan prosiding tersebut. Memandangkan keadaan kes ini, jelaslah bahawa perbuatan yang diadukan merupakan campur tangan yang ketara dengan pentadbiran keadilan ataupun perjalanan keadilan dan orang yang melakukannya patut dihukum dengan penghinaan mahkamah (lihat ms 590H–I, 592C–D, G).

(2) Seseorang tidak boleh dihukum sebanyak dua kali untuk satu penghinaan mahkamah. Di dalam kes ini, prosiding penghinaan mahkamah pertama adalah berkenaan dengan responden kerana mendapat perintah ex parte dari Mahkamah Tinggi Shah Alam. Prosiding penghinaan mahkamah yang pertama dimulakan berdasarkan alasan dan perbuatan yang spesifik tersebut sahaja. Bagi alasan untuk prosiding penghinaan mahkamah yang kedua, perbuatan yang diadukan berlainan dengan prosiding pertama.

Oleh itu, persoalan bahawa responden dihukum dua kali untuk perbuatan yang sama tidak berbangkit (lihat ms 592I–593A, D–F).

(3) Mahkamah memutuskan bahawa, di dalam keadaan kes ini, perayu tidak boleh disalahkan kerana tidak mendapat inunjksi mareva interim sementara menunggu pendengaran permohonan inter parte injunksi yang sama. Adalah munasabah untuk menganggap bahawa perayu menjangka bahawa responden akan menghormati perintah persetujuan tersebut. Hakikat perintah persetujuan tersebut dan oleh kerana tarikh pendengaran permohonan inter parte adalah hampir merupakan alasan munasabah perayu untuk tidak menyusahkan mahkamah dengan memohon perintah interim (lihat ms 594A–E).

(4) Mahkamah memutuskan bahawa fakta-fakta yang membentuk penghinaan mahkamah oleh pengarah dan pengurus besar syarikat responden telahpun dinyatakan dengan mendalam. Mereka tidak pernah menafikan bahawa mereka sedar perbuatan yang diadukan ataupun menafikan terlibat dengan perbuatan syarikat responden. Sememangnya syarikat tersebut memang tidak dapat melakukan perbuatan tersebut jikalau mereka tidak terlibat. Mereka telah membangkitkan pembelaan yang jelas menunjukkan bahawa mereka mempunyai pengetahuan tentang perbuatan penghinaan mahkamah yang dikatakan itu. Mahkamah tidak dapat melihat bagaimana mereka telah diprejudiskan. Lagipun, mereka tidak membangkitkan isu ini di dalam mahkamah bawahan (lihat ms 595G–I).

(5) Mens rea bukan merupakan satu syarat yang mesti dibuktikan di dalam prosiding penghinaan mahkamah. Walau bagaimanapun, memandangkan perbuatan syarikat responden dan keadaan di mana perbuatan tersebut dilakukan, yang mana penghina mahkamah tesebut tidak dapat mengelakkan diri daripada dikaitkan dengan perbuatan tersebut, niat mereka adalah ketara. Niat tersebut adalah supaya menghapuskirakan aset-aset syarikat responden untuk mengecewakan prosiding injunksi mareva yang belum selesai, dan sebarang penghakiman yang diperolehi oleh perayu di dalam prosiding timbangtara. Oleh itu, niat mereka jelas adalah untuk campur tangan di dalam pentadbiran keadilan atau perjalanan keadilan. Di dalam keadaan kes, mahkamah memutuskan bahawa penghina mahmakah tersebut bersalah melakukan penghinaan mahkamah (lihat ms 596A–D, 597B).

(6) Penghakiman ini tidak menyatakan bahawa apabila terdapat prosiding yang belum selesai, sebarang penghapuskiraan perkara pokok prosiding ataupun aset-aset sesuatu pihak adalah penghinaan mahkamah. Sama ada suatu perbuatan diambil sebagai campur tangan di dalam pentadbiran keadilan ataupun perjalanan keadilan, dan seterusnya adalah penghinaan mahkamah ataupun tidak, bergantung kepada keadaan setiap kes. Perbuatan tersebut mestilah serius secukupnya dan berkaitan

dengan prosiding tersebut. Mahkamah perlu membuat pertimbangan sama ada perbuatan tersebut dilakukan dengan niat baik, di dalam perjalanan urusan yang biasa atau sama ada ia dilakukan dengan niat untuk mengecewakan prosiding dan seterusnya membuat perintah-perintah selanjutnya tidak berguna (lihat ms 597D–F).

Notes

For cases on contempt of court generally, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1423–1540.

Cases referred to

Attorney General & Ors v Arthur Lee Meng Kuang [1987] 1 MLJ 206 (refd)
A-G's Application, A-G v Butterworth, Re [1963] 1 QB 696 (refd)
Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors [1986] 2 MLJ 193 (refd)
Attorney General, Malaysia v Manjeet Singh Dhillon [1991] 1 MLJ 167 (refd)
Attorney General v Hislop & Anor [1991] 1 All ER 911 (refd)
Attorney General v Newspaper Publishing plc [1988] 1 Ch 333 (refd)
Attorney General v Times Newspaper Ltd [1992] 1 AC 91 (refd)
Chandra Sri Ram v Murray Hiebert [1997] 3 MLJ 240 (refd)
Cheah Cheng Hoc v PP [1986] 1 MLJ 299 (refd)
Harrow London Borough Council v Johnstone [1997] 1 WLR 459 (refd)
Hoong Chin Wah v Cheah Kum Swee & Anor [1967] 1 MLJ 163 (refd)
Khoo Ah Yeow v Overseas Union Bank Ltd [1967] MLJ 22 (refd)
TO Thomas v Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151
United Malayan Banking Corp Bhd v Chuah Gim Suan @ Chai Chong Chin [1993] 2 AMR Supp Rep 803 (refd)

Legislation referred to

Rules of the High Court 1980 O 52 r 2(2)

Appeal from: Originating Summons No 24–509 of 1998 (High Court, Pulau Pinang)

Karin Lim Ai Ching (*Lim Hock Siang, Lim Chong Fong* and *Paul Kwong* with her) (*Presgrave & Matthews*) for the appellant.

V Sithambaram (*P Navaratnam* and *S Parameswaran* with him) (*Loo Siva & Param*) for the respondent.

Abdul Hamid Mohamad JCA (delivering judgment of the court)**:.** This appeal arose from the decision of the High Court in Penang (Raus J) dated 15 August 2000, dismissing the appellant's application to commit the respondent's directors, namely Khor Kok Boon and Mohd Dzolkefli bin Jaafar Sedik, and the respondent's General Manager, Khor Kok Thye for contempt of court. The respondent in the originating summons in the High

Court is the company Monatech (M) Sdn Bhd. We allowed the appeal with costs and remitted the case to the High Court for sentencing.

We shall refer to the company as the 'respondent' and the three named persons as 'the contemnors'.

As can be seen from the statement pursuant to O 52 r 2(2) of the Rules of the High Court 1980 ('the RHC') filed by the appellant, the application was based on two grounds. First, for the act of specific contempt for breach of the Mareva injunction granted on 24 August 1999. Secondly, on a more general conduct of the respondent throughout the proceedings in obstructing justice and abusing the process of the court.

The learned judge did appreciate this when he said:

> … Thus it appears to me that for the purpose of this committal proceedings, plaintiff [appellant] is relying on a specific act of contempt, that is the mareva injunction granted on 24 August 1999 and the order of 8 December 1999, and on a more general act of contempt, that is the conduct of the defendant [respondent] throughout the proceedings in obstructing justice, misleading the court and abusing the due process of the court.

Having said that, the learned judge dealt with the matter under four separate headings:

(i) contempt of the Mareva injunction granted on 24 August 1999 and the order of 8 December 1999;

(ii) defendant [respondent] is in contempt of court for instituting proceedings which are frivolous and vexatious and an abuse of court process;

(iii) defendant [respondent] is in contempt of court by obstructing and/or interfering with the due administration of justice and/or the course of justice under the cover of the Shah Alam suit and the injunction order, the defendant had removed the subject matter of this case with a view to set the court process to naught;

(iv) defendant [respondent] is in contempt of court by concealing and supressing facts with a view to mislead the court.

The learned judge found the contemnors not liable for contempt under each of the four headings.

Under the first heading, the learned judge was of the view that as on the day the Mareva injunction was granted (24 August 1999) restraining the respondent from dealing or disposing the six units of the unencumbered buildings under Phase II, Pekan Kilang Lama, Kulim, all those units were no longer with the respondent. Therefore, there could not be any act of contempt by the respondent against the said order.

We agree with him there.

Under the second heading, the learned judge found in favour of the respondent because, first, the High Court (Jeffrey Tan J) had already committed the respondent and Khor Kok Thye, one of the contemnors in these proceedings. This is what the learned judge says:

> However, it must be noted that contempt proceedings was taken against the defendant and the General Manager, Mr Khor Kok Thye, as well as their solicitors in relation to the Shah Alam suit, by this court. The defendant and Mr Khor Kok Thye, on 3 September 1998, were found guilty of contempt of court and were sentenced to RM10,000 fine each. Thus to me, the directors of the defendant and the general manager cannot be subjected to another committal proceeding for contempt. To do so would be tantamount to double jeopardy.

Secondly, the learned judge doubted whether the contemnors can be committed for contempt for abuse of the process of the court as the Shah Alam Court suit was filed by the respondent on the advice of its solicitors.

Under the third heading, the learned judge held:

> On the facts, I cannot hold that the defendant's [the company's] action of filing the Shah Alam suit was for the collateral purpose of providing a cover for them to remove the units or a pre-emptive move to destroy the subject matter to set the court process to naught, which amounts to contempt of court. To me, even without the Shah Alam suit, the defendant was not prevented from disposing the units as there was no court order preventing them from doing so. The plaintiff, after filing the Mareva injunction had choosed (sic) not to obtain any interim order to restrain the defendant from selling any of its assets, and hence the sale of the properties by the defendant, as they did, did not infringe any existing order of court or in any way amount to obstructing, interfering or subverting the due administration of justice. The act of the defendant in selling the properties cannot amount to contempt of court. After all, the defendant was a developer and its business must be to develop and sell properties.

Under the fourth heading, the learned judge found that there was no clear evidence for the court to find that the defendant had misled the court.

With respect, we are unable to agree to the approach taken by the learned judge in respect of the second ground of contempt, ie the conduct of the defendant company throughout the proceedings. We are of the view that the issues and the facts should not have been compartmentalized as the learned judge did. The court should look at all the facts as a whole and see whether there was an interference with the due administration of justice or the course of justice. That is what this contempt is all about.

We shall now narrate the facts of this case.

At or around 1997, the appellant commenced arbitration proceedings against the respondent in respect of disputes arising under a building contract.

On 1 June 1998, the appellant filed OS 509/98 pursuant to s 13(6)(f) and (h) of the Arbitration Act 1952 to secure some of the appellant's claims up to the value of RM2.5m pending the award of the arbitrator.

On 7 July 1998, the respondent filed OS 24–670–1998 (MT–3) at Penang High Court, seeking removal of the arbitrator on the ground of alleged bias, and obtained an ex parte injunction restraining the arbitrator.

On 20 July 1998, the parties recorded a consent order wherein the respondent agreed to deposit the sum of RM575,000 (being the retention

A sum) into a joint account held by the solicitors for the respective parties pending the determination of the said arbitration.

While OS 509/98 and OS 670/98 at Penang High Court were still in progress, the respondent, on 27 August 1998, filed a claim in Shah Alam High Court, ie Civil Suit No 22–1075–98 which was identical to the
B respondent's counterclaim in the arbitration proceeding.

On the very day the writ was issued, the respondent also applied for interlocutory relief. Although the respondent's application was not marked as an ex parte summons, and in fact made returnable inter partes before the judge in chambers on 4 September 1998, it was heard ex parte on 27 August 1998.

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The interlocutory relief which the learned judge (Faiza Tamby Chik J) allowed included an injunction restraining all proceedings at Penang High Court and an order directing that the sum of RM575,000, held in the joint account pursuant to the consent order made under OS 509/98, be forthwith paid out to the respondent upon service of the ex parte order.

D On 28 August 1998, the learned judge in Penang was served with the sealed copy of the said ex parte order together with a letter from the solicitors for the respondent to him to observe and comply with the said order.

On 29 August 1998, arising from the service of the order dated 27 August 1998 on the court, and the notice dated 27 August 1998 on the
E judge, the court initiated contempt proceedings against the respondent, Khor Kok Thye and Mahadevi Nadchatiram.

No order of committal was recorded against Mahadevi Nadchatiram.

On 24 October 1998, the respondent and Khor Kok Thye were convicted and fined RM10,000 each. The proceedings in OS 509/98 and
F OS 670/98 however had to be suspended pending the determination of the Shah Alam suit.

The appellant's application to strike out the writ at Shah Alam High Court was unsuccessful.

The appellant appealed and on 3 May 1999, the Court of Appeal struck
G out the Shah Alam suit as being the worst case of abuse of court process.

On 12 May 1999, the respondent's application to the Federal Court for a stay of proceedings pending their appeal to the Federal Court was dismissed.

On 17 May 1999, in just one day, six days after the Federal Court
H dismissed the respondent's application for a stay of proceedings pending appeal to the Federal Court, according to our counting, 26 units were transferred at a price that ranged from RM250,000 to RM300,000 each. Of the 26 units, 11 were transferred to Ooi Tong Sun, eight to EC Trading Sdn Bhd and five to New Resources (M) Sdn Bhd. It is not disputed that Ooi Tong Sun is a close relative of Khor Kok Thye, a director of the respondent
I and Khor Kok Boon, the General Manager of the respondent, even though the exact relationship is not known. The estimated total purchase price was about RM2m.

EC Trading Sdn Bhd belongs to Khor Kok Khiang, a brother of Khor Kok Thye and Khor Kok Boon. The company has a paid up capital of RM600,000. The cost of the six units, even at RM250,000 is RM1.5m.

The transfer to Ooi Tong Sun and EC Trading Sdn Bhd took place within one month of the sale and purchase agreements, not a usual conveyancing practice.

New Resources (M) Sdn Bhd is a RM2 company owned by Khor Kok Boon and his close relative. According to the terms of the purported sales, the balance purchase price was payable only after the registration of the transfers to New Resources (M) Sdn Bhd.

As such, by the time proceedings resumed at Penang High Court on 16 June 1999, the respondent company was an empty shell.

Notwithstanding the transfers made, the respondent remained silent and filed affidavits maintaining the position as put forward in their affidavits filed prior to 27 August 1998.

Further, it should be noted that the learned judge (Jeffrey Tan J) had cautioned and warned the respondent not to dispose off units under Phase II of the project in light of fresh evidence regarding the disposal of the three units to New Resources (M) Sdn Bhd during the course of resumed hearing in June 1999. Nevertheless, the respondent remained silent about the fact that all the remaining units had also been disposed off.

On 24 August 1999, the learned judge (Jeffrey Tan J) allowed the appellant's application and issued a Mareva injunction against six units of shop houses under Phase II of the project pending the arbitrator's award.

However, it was only on 17 November 1999 that the respondent informed the appellant that there were no units at Phase II left to satisfy the said judgment.

On 18 December 1999, upon the appellant's application, the respondent was ordered to file an affidavit stating the particulars of the six units that were the subject matter of the order of 24 August 1999. The respondent instead filed an affidavit saying that all the six units had been disposed off.

On 3 February 2000, the appellant obtained leave to commit the contemnors for contempt. This was followed by the notice of motion filed on 15 February 2000. The learned Judge (Raus J) dismissed the motion on 15 August 2000. Hence this appeal.

The power to punish for contempt of court is provided in art 126 of the Federal Constitution:

> The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt of itself.

There is also a similar provision in s 13 of the Courts of Judicature Act 1964.

So, it is not quite correct to say that it is a common law power introduced by s 3(1) of the Civil Law Act 1956 ('CLA'). It is the common law principles that the courts of this country have been applying.

In *Attorney General, Malaysia v Manjeet Singh Dhillon* [1991] 1 MLJ 167, Mohamed Yusoff SCJ said, at p 177:

> The Supreme Court has this far consistently applied common law principle of contempt of court as seen in the judgments in some of these cases, viz *A-G & Ors v Arthur Lee Meng Kuang* [1987] 1 MLJ 206, *Lim Kit Siang v Dato' Seri Dr Mahathir Mohamed* [1987] 1 MLJ 383 and as recently as this year in *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor* [1990] 1 MLJ 273. All these cases dealt with contempt in scandalizing the court. I see no reason now to depart from these principles. Further, common law, as has been expounded, applied and decided by our courts after 7 April 1956, by virtue of the Civil Law Act 1956, has become part of our law.

We agree with what the learned judge says but, with respect, we must say that we are not very clear as to what the learned judge means by the last sentence quoted above. What s 3(1) of the CLA and the proviso thereto says is that:

> Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the court shall —
>
> (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 day of April 1956;
>
> ...
>
> Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

In other words, in West Malaysia, the common law of England (we are only referring to the 'common law' here) as administered in England on 7 April 1956 applies, unless provisions have been made before or after that date by any written law in force in Malaysia on the subject.

But, even if no provisions have been made by any written law in Malaysia on the subject, such principles are applicable only in so far as the circumstances of the State of Malaysia and its respective inhabitants permit. Furthermore, even if it is 'permissible' to apply such principles they may still be subject to such qualifications as local circumstances render necessary.

In our view, that section does not require West Malaysian courts to apply automatically every principle of the common law of England as administered in England on 7 April 1956. The courts must consider first whether it is 'permissible' to apply such principles and, secondly, even if 'permissible' whether it should be 'qualified' (and we would add, 'modified') as local circumstances render necessary. What if it is not 'permissible'? The answer is clear: the court should reject them and look instead to other sources of law, be they principles of Islamic law of general application, established customary law, principles of law from other jurisdictions and formulate new principles, thus developing the Malaysian common law.

Gan Chit Tuan SCJ (as he then was) in the same case, stressed that Malaysian courts should not lose sight of local circumstances and conditions. He said at pp 182–183:

> In this country, since the Civil Law Act 1956, and the coming into force of the Federal Constitution in 1957, our courts have decided a few cases involving contempt of court. *Attorney General & Ors v Arthur Lee Meng Kuang* [1987] 1 MLJ 206 and *Trustees of Leong San Tong Khoo Kongsi (Penang) & Ors v SM Idris & Anor* [1990] 1 MLJ 273 are two of such cases. The defence had sought to distinguish those cases and contended that they are not applicable. But is quite clear from those cases that this court has recently held that in deciding whether any criticism on a court or judge falls within the limits of reasonable courtesy and good faith, the court should not, however, lose sight of local circumstances and conditions. This was also the proposition laid down in *PP v Straits Times Press Ltd* [1949] MLJ 81 and in *PP v SRN Palaniappan & Ors* [1949] MLJ 246 where Spenser Wilkinson J hesitated to follow too closely the decisions of English courts on the subject of contempt without first considering whether the relevant conditions in England and this country are similar.

In *Chandra Sri Ram v Murray Hiebert* [1997] 3 MLJ 240, Low Hop Bing J said at p 275:

> Article 10(2)(a) of the Federal Constitution provides inter alia, that Parliament may impose restriction by law relating to contempt of court. Parliament, in its wisdom, has deemed it unnecessary to impose any restriction under art 10(2)(a).
>
> In the absence of any restriction imposed by art 10 (2)(a) of the Federal Constitution, it is eminently clear that the path is well paved for the growth and development of common law in relation to contempt of court. Our courts are expressly empowered to deal with the ambit and perimeter of what constitutes contempt of court in Malaysia.

We agree with the views expressed by Low Hop Bing J in paragraph quoted above.

Let us now look at the common law principles of contempt of court. Oswald's *Contempt of Court* (3rd Ed), gives a general definition of contempt of court as follows:

> To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation.

In *Attorney General v Hislop & Anor* [1991] 1 All ER 911, Nicholls LJ said, at p 923:

> Contempt of court is interference with the due administration of justice.

Attorney General v Newspaper Publishing plc [1988] 1 Ch 333 is a case in which an application was made to commit three newspapers for contempt of court for publication of extracts and summaries of the memoirs of a retired officer of the British Security Service. The three newspapers were neither parties to the actions nor subject to the injunctions issued by the court. Lloyd LJ in his judgment, said at pp 378–379:

> But the question here is not whether a third party is bound by the injunction, but whether he can be liable for contempt even though he is not bound by the

injunction. He cannot be liable in contempt for breach of an order to which he is not a party; nor, on the facts of the present case, could the respondents be liable for aiding and abetting a breach. But it does not follow that they may not be liable for interfering with the course of justice. Thus, to take a wholly improbable example in order to illustrate the point, suppose a party to certain proceedings assaults or abuses the judge; suppose the judge makes an order against him in the proceedings prohibiting him from repeating his abusive conduct. If a stranger comes to court and abuses the judge in like manner, it will surely not be a defence to a charge of contempt that he was not a party to the order. His conduct amounts to a contempt of court independently of any order made in the proceedings. Nor would holding such a man liable for contempt create any undesirable uncertainty or injustice. He is assumed to know that abusing the judge is a contempt of court. Ignorance of the law will afford him no more excuse in this than in any other branch of the criminal law.

It may be said that abusing the judge is an obvious contempt, whereas interfering with the course of justice, in particular proceedings, is much less precise. This is true. Moreover I would accept that not all acts which are calculated to interfere with the course of justice will necessarily ground a charge of contempt. The act must be sufficiently serious and sufficiently closely connected with the particular proceedings. But in the present case the conduct relied on by the Attorney General is not marginal. It is not a mere prejudging of the issue to be decided in the particular proceedings. It is not a mere usurpation of the court's function. It is the destruction, in whole or in part, of the subject matter of the action itself. The central issue in the Guardian action is whether 'The Guardian' should be restrained from publishing confidential information attributable to Mr Wright. Once the information has been published by another newspaper, the confidentiality evaporates. The point of the action is gone. It is difficult to imagine a more obvious and more serious interference with the course of justice than to destroy the thing in dispute.

Again, at p 380, the learned judge said:

> There is, I think, a useful analogy to be drawn with the power of a court to order a hearing in camera. Putting aside s 12 of the Administration of Justice Act 1960, publication of proceedings held in camera may be a contempt, not because it is in breach of the order of the court but because it is an interference with the course of justice. In *Arlidge and Eady, The Law of Contempt* (1982) the authors, having discussed *Scott v Scott* [1913] AC 417; *Re Forse (A Minor) (Publication of Information)* [1977] Fam 58 and *Attorney General v Leveller Magazine Ltd* [1979] AC 440, conclude at p 244, para 4–151:
>
> > 'Since the test of contempt is not breach of the order but, interference with the administration of justice, it follows that at common law a contempt may be committed even if no specific order has been made by the court affecting anyone other than those involved in the proceedings. At common law, if the court makes an order regulating its own procedure and the purpose of the order is plainly to protect the administration of justice, then anyone who subverts that order will be guilty of contempt.'
>
> In my judgment that represents an accurate statement of the law.

And again, at p 384, the learned judge said:

> Undoubtedly an act which interferes with the course of justice is capable of constituting a contempt of court.

Lord Cross of Chelsea said in *Attorney General v Times Newspapers Ltd* [1974] AC 273 at p 322:

> 'Contempt of court' means an interference with the administration of justice and it is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the diquity of the court. Nowadays when sympathy is readily accorded to anyone who defies constituted authority the very name of the offence predisposes many people in favour of the alleged offender. Yet the due administration of justice is something which all citizens, whether on the left or the right or in the centre, should be anxious to safeguard.

It should be noted that that case is one of the 'thalidomide cases'. About 450 children were born with gross deformities to mothers who had taken that drug during pregnancy. Actions were filed against the company. While those cases were still pending, the newspaper published the first of a series articles to draw attention to the plight of the thalidomide children. Upon a complaint by the company that the article was a contempt of court because litigation against the company was still pending, the Attorney General obtained an injunction restraining publication on the ground that it would be a contempt of court. It is in that light that the above quoted statement was made.

In *Harrow London Borough Council v Johnstone* [1997] 1 WLR 459 (HL), Lord Mustill, after referring to a passage in the judgment of Lord Oliver of Aylmerton in *Attorney General v Times Newspaper Ltd* [1992] 1 AC 91, said at p 469:

> This reasoning shows, I believe, that even where there is no injunction to make explicit the importance of preserving the subject matter of an action until a trial a wanton destruction of that subject matter, with the intention of impeding a fair and fruitful trial, is capable of being a contempt of court; and indeed I would myself have been willing to recognize this possibility even without the guidance of the House.

In an old case of *Re Sepimus Parsonage & Co* [1901] 2 Ch 424, it was held that:

> When a petition is pending for the winding-up of a company, it is a contempt of court to issue a circular to the shareholders of the company containing misrepresentations with the intent to obtain a resolution of the company for the voluntary winding up thereof, and thereby mislead the court as to the real view of the shareholders and prevent a compulsory winding-up order being made.

Misleading the court is also contempt. The case of *Cheah Cheng Hock v PP* [1986] 1 MLJ 299 is an example where an advocate and solicitor was found guilty of contempt for concealing a document effecting the credibility of a witness in a civil suit.

From the judgments referred to above, it is clear that the existence of an injunction order is not a pre-requisite for contempt of court. The test is not the breach of the order but interference with the due administration of justice or, as some learned judges put it, interference with the course of justice. The

two phrases, in our view, mean the same thing. And, the categories of contempt are never closed. Low Hop Bing J, in *Chandra Sri Ram v Murray Hiebert* has aptly stated the law at p 270 and we agree with him:

> The circumstances and categories of facts which may give rise and which may constitute contempt of court, in a particular case, are never closed.

We agree with these statements of law and we see no reason why we should not apply the common law principles that have been consistently applied by our courts.

With that, we shall now look at the facts of this case.

Learned counsel for the appellant submitted that the crux of matter in this appeal was the disposal of the very assets, the subject matter of the appellant's application for a Mareva injunction in OS 509/98, to family members and closely related parties of the respondent pending the determination of the appellant's said application. Learned counsel also submitted that the said act amounted to obstruction, interference and subversion of the due administration of justice or the course of justice. It was done in bad faith with a view to set the process of court to naught. It was done immediately or contemporaneously after the Court of Appeal had struck out the case filed by the respondent in Shah Alam High Court. So much so, that by the time the Penang High Court was ready to resume the hearing of OS 509/98, after the Court of Appeal had lifted the injunction issued by the Shah Alam High Court, the respondent had surreptitiously dissipated all assets which were the subject matter of the proceeding.

We have reproduced the sequence of events and will not repeat. However, we will stress the important facts and the circumstances under which the disposals were made.

First, about five weeks after the appellant filed OS 509/98 to secure some of the appellant's claims pending the determination of the arbitration, the respondent filed OS 670/98 to remove the arbitrator and obtained an ex parte injunction restraining the arbitrator. However, about two weeks later, a consent order was entered whereby the respondent agreed to deposit a sum of RM575,000 (being the retention sum) into a joint account pending the disposal of the arbitration. Five weeks later, and while OS 509/98 and OS 670/98 were still pending in Penang High Court, the respondent filed the civil suit in Shah Alam High Court and obtained an ex-parte injunction restraining all proceedings at Penang High Court, and an order that the sum of RM575,000 be paid forthwith to the respondent. That order was served on the judge in Penang High Court on the following day, thus stalling the hearing of the appellant's originating summons (OS 509/88). The appellant applied to strike out the respondent's writ at the Shah Alam High Court, but was not successful. The appellant appealed to the Court of Appeal. On 3 May 1999, the Court of Appeal decided in favour of the appellant. The effect is that the respondent's writ in Shah Alam High Court was struck off and the injunction and other orders made were set aside. The respondent's application for stay of proceedings pending appeal to the Federal Court was dismissed on 12 May 1999.

Immediately after that, the respondent started disposing off the assets to closely related parties, as stated earlier.

That notwithstanding, the respondent remained silent and filed affidavits maintaining the same position as put forward in their affidavits filed prior to 27 August 1998. During the hearing, the learned judge warned the respondent not to dispose of units in Phase II in the light of fresh evidence regarding the disposal of the three units to New Resources (M) Sdn Bhd.

On 24 August 1999, the learned judge allowed the appellant's application for Mareva injunction in respect of six units of shop houses under Phase II until the determination of the arbitration.

Can one honestly say that these transfers were done in the ordinary course of business? We do not think so. It is very clear to us that the transfers were for no other reason than to defeat the application for the Mareva injunction that was pending, and the judgment that may be given in favour of the appellant and the execution thereof, if and when made. The transfers were clearly done in bad faith to defeat the appellant's claims. It is a very clear case of interference with the due administration of justice or the course of justice. It is sufficiently serious and sufficiently closely connected with the particular proceedings.

It is true that courts should be slow to punish a person for contempt. But that does not mean that the courts should sit with folded arms, engrossed with legal theories whilst parties in the proceedings are removing the subject matter of the claim to defeat the making of the order that the court would and might make, and to reduce the order, if and when made, to no more than a paper judgment, as had happened in this case. Interest of individuals is to be respected, yes, but not that of dishonest individuals. And, when the interest of justice and of the public come face to face with the interest of individuals, the former must prevail. Otherwise, the public will lose confidence in the courts. If the courts and the administration of justice are to be respected, the courts must ensure that their judgments are effective. Judgments are not mere literary works. No matter how learned they are and how well they are written, if they cannot deliver the goods, they are of no use.

Taking all the circumstances of this case, it is very clear to us that the acts complained of are a blatant interference with the due administration of justice or the course of justice that the perpetrators should be punished with contempt of the court.

On the question of double jeopardy, the learned judge (Raus J) was of the view that:

> While it may be true that the committal proceeding for contempt against the defendant and Mr Khor Kok Thye were not specifically for filing the Shah Alam Suit, but the fact remain that they were punished and sentenced arising from the Shah Alam Suit. To me they could not be subjected to another contempt proceeding.

Whereas we agree that a person cannot be punished twice for contempt for the same act, the question here is whether this is such a case.

The notice to show cause issued by the learned judge (Jeffrey Tan J) clearly shows that contempt proceeding was in respect of the respondent obtaining the ex parte order from the Shah Alam Court '(i) restraining the further conduct of Penang High Court 24–509–98 until the disposal of Shah Alam High Court 22–1075–98, and, (ii) ordering the immediate release to Monatech (M) Sdn Bhd of the sum of RM575,000 …', which order was served on the Penang High Court vide the letter dated 27 August 1998 of the respondent's then solicitors demanding compliance of the same. It should be noted that that letter was addressed to 'Yang Arif' and delivered personally by Khor Kok Thye. That letter, inter alia, says:

> Bersama–sama ini desertakan (sic) sesalinan meterai perintah mahkamah bertarikh 27 Ogos 1998 yang diperolehi oleh kami secara penyampaian kediri ke atas tuan. Sehubungan itu, sila tuan mematuhi perintah mahkamah berkenaan dengan mengarahkan bahawa kesemua prosiding-prosiding ini dihalang dan digantungkan sejingga (sic) pelupusan penuh dan muktamad tindakan ini. (Emphasis added.)

It is on that narrow ground and on those specific acts that the first contempt proceeding was initiated.

The second contempt proceeding that we are concerned with now, is premised on the conduct of the respondent in disposing of the assets to closely related parties and close relatives of the directors and general manager of the respondent, immediately after the decision of the Court of Appeal, while the proceeding in Penang High Court for the Mareva injunction was still pending, which proceeding was until then, stalled by the Shah Alam High Court injunction.

Further, this second contempt proceeding is also based on the ground that the respondent had, throughout the proceeding in Penang High Court in fact until after the Mareva injunction was granted, misled the appellant and the court into believing that the six units were still available when, in fact, they had been disposed off.

So, the grounds for the second contempt proceeding, the acts complained of are different from those in the first proceeding. In the circumstances, the question of the respondent being punished twice for the same act does not arise.

It was argued that even though the appellant had filed an application for a Mareva injunction as early as 2 June 1998, the appellant did not obtain an ex parte order and serve it on the respondent. The application came up for hearing inter parte on 30 June 1998, 20 July 1998, 25 July 1998, 8 August 1998 and 14 August 1998, a total of five occasions. Yet, the appellant did not apply for an interim order pending the outcome of the inter parte hearings. In other words, the appellant was not sufficiently concerned about its intended security for almost three months, to apply for an interim order.

To appreciate what was happening during that period, we have to return to the chronology of events. The appellant filed OS 509/98 on 1 June 1998 and the application for the Mareva injunction the following day. On 7 July 1998, the respondent filed OS 670/1998. On 20 July 1998, the consent order was recorded. Then on 27 August 1998, the respondent

obtained the injunction order from the Shah Alam High Court. From that day until 3 May 1999 (the date of the decision of the Court of Appeal) there was nothing that that appellants could do because to do so would be in breach of the injunction order of the Shah Alam High Court. During the three months, a consent order was recorded. It is reasonable to assume that the appellant had expected that that consent order be honoured by the respondent. That consent order, plus the fact that the date(s) for the hearing of the application inter partes were close by were reasonable grounds for the appellant to feel quite safe and not to trouble the court further by applying for an interim order. That might further complicate matters besides causing further delay in the hearing of the application inter parte. Who could have thought that the respondent would go to the Shah Alam High Court to obtain an ex parte order to restrain the Penang High Court from hearing the applications therein. Indeed, who would have thought such an order would be made and ex parte?

Anyway, what we are now concerned about is what transpired immediately after the decision of the Court of Appeal (3 May 1999) or the dismissal by the Federal Court of the respondent's application for stay of proceedings (12 May 1999) until the granting of the Mareva injunction. It is after that that the hearing in the Penang High Court could resume, and in fact resumed on 16 June 1999. However, during that short space of time the respondent had disposed of the remaining assets. We do not think that in the circumstances, the appellants can be faulted for not obtaining an interim Mareva injunction pending the hearing inter parte of the application for the same injunction.

Some other points were raised by the learned counsel for the respondent. We shall deal with them briefly.

It was argued that the statement filed pursuant to O 52 r 2(2) of the RHC did not disclose the alleged facts of the acts done by the alleged contemnors that warrants them to be convicted for contempt of court.

First, it must be pointed out that this point was never raised in the court below. It would therefore be unfair to allow the respondents to raise it now. In *Hoong Chin Wah v Cheah Kum Swee & Anor* [1967] 1 MLJ 163, Azmi CJ (as he then was), with whom Barakbah LP and Chang Min Tat J (as he then was) concurred, said at p 166:

> It is abundantly clear from the cases cited above by both counsel that the question as to whether an appellate court should allow a new point or a point abandoned in the court below to be argued before it is a matter of discretion. Though the rule would appear to be that the court should only allow such new point or abandoned point to be argued in exceptional circumstances. In my view, no such exceptional circumstances exist in this case …

It is to be noted that in that case, even though the cause of action as pleaded was in both contract and tort, learned counsel for the appellant (plaintiff) informed the court during the trial that he was basing his claim for damages in tort only and not for breach of contract.

In the present case, this issue now under discussion was not mentioned at all in the affidavit of the contemnors setting out their defences. In a

motion such as this, where the defences are required to be raised in the affidavits, the appellate court, in our view, should even be more strict to allow a new point, not being purely a point of law, to be raised for the first time during the hearing of the appeal. See also *Khoo Ah Yeow v Overseas Union Bank Ltd* [1967] MLJ 22 (FC).

Be that as it may, the statement pursuant to O 52 r 2(2) of the RHC, filed by the appellant, is a lengthy document and need not be reproduced. In brief, it states the three named contemnors and their respective positions in the respondent company. It gives the grounds for the alleged contempt, two of which are for their conduct in abusing the process of the court and for their conduct in 'menghalang, menjejaskan dan melemahkan pentadbiran keadilan.' Then it went on to give the reasons for the alleged contempt, listing the events from the time OS 509/98 was filed by the appellant until the end of 1999. In our view, all the facts that need be stated have been stated. They are sufficient for the contemnors to know what the alleged contempt is all about and for what they are cited for contempt.

It is true that the statement refers to the 'defendant', meaning the company. But, as was made very clear, the three contemnors were the directors and general manager of the respondent company, and they were cited as such and there were no other directors and general managers except the three of them. They never denied that they were involved in the acts complained of nor did they ever deny that they knew of the acts complained of. In fact, all the three of them, through Khor Kok Thye, filed affidavits and set out their defence which clearly shows that they knew the facts of the contempt alleged against them.

In *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193, one of the allegations was that the statement was defective as it lacked particulars. Mohamed Azmi SCJ in delivering the judgment of the court said at p 196:

> Lastly, as regards the complaint that the charge in the statement is defective in that it lacks particulars, we note that the alleged contempt in the statement is in the writing of the four letters by the advocate himself to the appellate Judges either directly or copied to them and others. Having regard to the contents of the letters which are referred to in the statement and exhibited in the verifying affidavit, we find it is sufficient for the advocate to know what the alleged contempt is against, and to enable him to meet the charge and prepare his defence.

In the present case, the facts constituting their alleged contempt as directors and general manager of the respondent company, respectively, have been set out in great detail, they had never denied that they knew of the acts complained about, nor did they deny having anything to do with such acts of the respondent company. Indeed, the company could not have done what it did without them. They had put up their defence which clearly shows that they had knowledge of the alleged acts of contempt. We cannot see how they had been prejudiced in any way. Furthermore, they had not raised this issue in the court below.

In the circumstances, we find that there is no merit in this argument.

It was also argued that mens rea of the contemnors have not been proved. The short answer is that mens rea is not an ingredient to be proved in contempt proceedings. In *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696, Donovan LJ said at p 726:

> I conceive the position, however, to be this. *Reg v Odhams Press Ltd, ex p A-G* [1956] 3 All ER 494 makes it clear that an intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of court. It is enough that the action complained of is inherently likely to interfere.

This passage was quoted with approval in *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151, see also *Chandra Sri Ram v Murray Herbert* and the cases referred therein.

In any event, looking at all the acts of the respondent company and the circumstances under which they were carried out from which the contemnors cannot disassociate themselves, the intention is too clear. It is no other than to dissipate all the assets of the respondent company in questionable dealings to frustrate the Mareva injunction proceedings then pending and any judgment that might be obtained later by the appellant in the arbitration proceeding. Thus, their intention clearly is to interfere with the due administration of justice or in the course of justice.

There is one more point that we have to discuss. It was also argued that the order of court in question was not personally served on Khor Kok Boon, one of the contemnors. This is another point raised for the first time in this court. It should not be allowed nor considered. Besides what we have said earlier, we would like to reiterate what Abdul Hamid Mohamad J (as he then was) said in *United Malayan Banking Corp Bhd v Chuah Gim Suan @ Chai Chong Chin* [1993] 2 AMR Supp Rep 803 at pp 807–808:

> Semasa memberi keterangan di mahkamah, responden/defendan membangkitkan alasan baru pula. Katanya dia tidak disampaikan perintah bertarikh 17 Julai 1991, itu. Alasan ini tidak disebut dalam affidavit jawapannya. Saya berpendapat, dalam prosiding seperti ini, di mana affidavit adalah dianggap sebagai pliding, sesuatu pihak tidak boleh dibenarkan membangkitkan persoalan fakta yang tidak dinyatakan dalam affidavit. Jika sesuatu pihak itu boleh membangkitkan apa sahaja persoalan fakta bila-bila masa sahaja, walaupun tidak dinyatakannya dalam afidavitnya, tidak ada makna dia dikehendaki memfail afidavit. Tujuan afidavit-afidavit itu dikehendaki difail adalah untuk pihak lawan tahu apa persoalan yang perlu dihadapi dan isu-isu dapat diketahui lebih awal dan dijawab, jika perlu.
>
> Nyataan responden/defendan dalam kes ini bahawa dia tidak disampaikan perintah itu adalah satu nyataan fakta, bukan undang-undang.

Be that as it may, it must be noted that the contempt now in issue is not the contempt of the court order. This is contempt for interference with the due administration of justice or the course of justice, the acts of which were done prior to the order being made by the court. In any event, personal service were made on two other contemnors, and in the case of Khor Kok Boon, on his solicitors. Para 4.24 of the statement clearly states:

Khor Kok Boon adalah pengarah defendan dan mempunyai pengetahuan penuh mengenai prosiding di sini dan beliau pernah mengikrarkan afidavit untuk defendan dalam prosiding di Mahkamah Rayuan Malaysia, dan juga memfailkan dokumen bagi pihak defendan dalam prosiding arbitration dan pernah datang ke arbitration walaupun tidak memasuki ke dalam. Tambahan pula, perintah Mareva telah diserahkan kepada peguamnya dan ia mempunyai pengetahuan mengenainya.

There is no denial that he was aware of the order.

We do not think we need to say more on this point.

In the circumstances, we are of the view that the three contemnors were guilty of contempt and we ordered that the matter be referred back to the learned judge for sentencing.

Lastly, we would like to say that we are aware of the far reaching consequences of this decision as this is perhaps the first time in this country that the court finds a person guilty of contempt not for breach of a particular order of court but for conduct of interfering with the due administration of justice or the course of justice, by disposing the subject matter of a pending proceeding under questionable circumstances to questionable people to frustrate the outcome of the proceedings and the execution thereof. This judgment must not be understood to mean that whenever there is a pending proceeding, any disposal of the subject matter of the proceedings or the assets of one of the parties thereto is contempt. No, far from it. Whether an act amounts to an interference with the due administration of justice or the course of justice and therefore contempt, or not, depends on the circumstances of each case. The act, as stated by Lloyd LJ in *Attorney General v Newspaper Publishing plc*, must be sufficiently serious and sufficiently closely connected with the particular proceedings. The court will have to consider whether the act is done in good faith, in the ordinary course of business or whether it is one with a view to frustrate the proceedings, thus rendering any subsequent order of court ineffective and fruitless. We do not think we can draw an exhaustive list, because, as in all cases, it depends on the circumstances of each case. However, we are certain that he who is honest should have nothing to fear, but he who is not should have a lot to ponder.

For these reasons, we allowed the appeal with costs and remitted the case back to the High Court for sentencing.

Appeal allowed.

Reported by Jafisah Jaafar